

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5631**

**PETITION OF VICTOR M. FAUSTINO**

(Hearing held September 12, 2001)

**OPINION OF THE BOARD**

(Effective date of Opinion, October 11, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326. The petitioner proposes to construct an accessory structure (shed) that requires a variance to be located in the side yard. Section 59-C-1.326 requires accessory structures to be located in the rear yard only.

The subject property is Lot 11, Block L, Goshen Estates Subdivision, located at 5 Delta Court, Laytonsville, Maryland, in the RE-2 Zone (Tax Account No. 01300013241).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct a shed in his northern side yard.
2. The petitioner testified that the property is a 'pipestem' lot, with access provided via Delta Court. A private road provides access to the petitioner's property and two other lots. See, Exhibit No. 4(a).
3. The petitioner testified that his septic system is located in the eastern side yard and that the proposed construction could not be located elsewhere on the property. The petitioner testified that the proposed shed would be located in the rear yard of the property, behind the residence, but that the Department of Permitting Services (DPS) has designated the rear yard as a side yard.
4. The petitioner testified that the shed would face the rear yard of the most impacted neighbor and the structure would not be visible from the front of the lot or for the neighboring properties.

**FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is a 'pipestem' lot that is only accessible via a private road. The proposed shed would be located in the rear yard of the property behind the petitioner's residence. DPS has designated the petitioner's rear yard as a side yard. The septic system for the property is located in the eastern section of the property and restricts the siting of new construction on the property.

The Board finds that these exceptional circumstances are unique and peculiar to the property and that the strict application of the regulations would result in an undue hardship upon and practical difficulties for the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of an accessory structure/shed is the minimum reasonably necessary to overcome the exceptional circumstances of the property.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction would continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction would be located in the rear yard of the property and would face the rear yard of the most impacted neighbor. The Board finds that the shed would not be visible to most of the neighboring properties and that the variance would not be detrimental to the use and enjoyment of the adjoining and neighboring properties. The record contains no correspondence or testimony in opposition to the variance request.

Accordingly, the requested variance to permit the construction of an accessory structure (shed) in the side yard is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 6.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Donna L. Barron was necessarily absent and did not participate in this Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 11th day of October, 2001

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.